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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**  
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10 Jerry L. Richards et al.,

11 Plaintiffs,

12 vs.

13 Del Webb Communities, Inc., et al.,

14 Defendants.

15 Del Webb Communities, Inc., et al.,

16 Third-Party Plaintiffs,

17 vs.

18 Uponor, Inc., et al.,

19 Third-Party Defendants.  
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No. CV-11-368-PHX-SMM

**ORDER**

22 Before the Court is Defendants/Third-Party Plaintiffs Del Webb's Motion to Alter or  
23 Amend Judgment and Motion for Relief from Judgment and Order Re: February 8, 2013,  
24 Memorandum of Decision and Order and February 11, 2013 Judgment. (Doc. 379.) Third-  
25 party Defendants Uponor and Ampam Riggs have Responded (Docs. 381, 382), Del Webb  
26 has Replied (Doc. 383), and the matter is fully briefed. After reviewing the briefs, and  
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1 having determined that oral argument is unnecessary,<sup>1</sup> the Court will grant the Motion to  
2 Amend to the limited extent of modifying the Court's prior dismissal to be without prejudice.

### 3 BACKGROUND

4 Plaintiff Jerry L. Richards initiated this lawsuit on February 24, 2011, and Del Webb  
5 and Pulte later successfully moved to implead various Third-Party Defendants including  
6 Uponor, Ampam Riggs Plumbing, Inc. ("AmPam Riggs"), Pratte Building Systems, LLC,  
7 Pratte Development Company, Inc., and Pratte Holding Company, LLC, (collectively  
8 "Pratte"), who Del Webb and Pulte asserted may also be liable for any damages. (Doc. 26;  
9 Doc. 36.)

10 On February 11, 2013, the Court granted Del Webb's Motion to Dismiss Plaintiff's  
11 Complaint for Mootness, which was joined by Third-party Defendants. (Doc. 372.) The  
12 Court's order granting the motion directed the Clerk of Court to dismiss all claims in this  
13 matter with prejudice. (Id. at 11.) This necessarily included Del Webb's claims against  
14 Third-party Defendants, and accordingly the Clerk of Court entered judgment dismissing all  
15 claims with prejudice. (Doc. 373.) In its order, the Court did not discuss its reasoning for  
16 dismissing these third-party claims, nor was dismissal of those claims sought in the Motion  
17 to Dismiss which was the subject of that order.

18 Del Webb now asks this Court to reconsider and alter the Judgment, either to maintain  
19 supplemental jurisdiction over Del Webb's third-party claims, or in the alternative to alter  
20 the dismissal of those claims to dismissal without prejudice. (Doc. 379.)

### 21 LEGAL STANDARD

22 A federal court may exercise supplemental jurisdiction over other claims in the same  
23 case or controversy as a claim within the district courts' original jurisdiction. 28 U.S.C. §  
24 1367. However, "pendent jurisdiction 'is a doctrine of discretion, not of plaintiff's right,'"   
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26 <sup>1</sup> Defendant's request for oral argument is denied because the parties have had an  
27 adequate opportunity to present their written arguments, and oral argument will not aid the  
28 Court's decision. See *Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev.*, 933 F.2d  
724, 729 (9th Cir. 1991).

1 and district courts “can decline to exercise jurisdiction over pendent claims for a number of  
 2 valid reasons.” City of Chicago v. Int’l Coll. of Surgeons, 522 U.S. 156, 172, (1997) (citing  
 3 Mine Workers v. Gibbs, 383 U.S. 715, 726, (1966)). Thus, “district courts [should] deal with  
 4 cases involving pendent claims in the manner that best serves the principles of economy,  
 5 convenience, fairness, and comity which underlie the pendent jurisdiction doctrine.” Id. at  
 6 172-173.

### 7 DISCUSSION

8 Del Webb argues that this Court should elect to take supplemental jurisdiction over  
 9 its third-party claims. (Doc. 379 at 3-4.) Del Webb argues that this would further judicial  
 10 economy, efficiency, and fairness because this action was filed in February 2011, and Del  
 11 Webb anticipates that the third-party claims could potentially be settled or resolved through  
 12 motions practice with little discovery. (Id.)

13 The Court disagrees, and declines to exercise supplemental jurisdiction over these  
 14 claims. Although this case has history in this Court, the Court finds no compelling reason  
 15 to retain jurisdiction over these state-law claims. Del Webb has an adequate opportunity to  
 16 pursue these claims in state court. However, Del Webb’s motion will be granted to the extent  
 17 of modifying the Court’s prior order to a dismissal without prejudice of Del Webb’s third-  
 18 party claims.

### 19 CONCLUSION

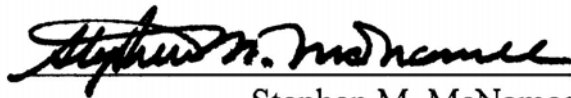
20 Accordingly, for the foregoing reasons,

21 **IT IS HEREBY ORDERED granting** the Motion to Amend to the limited extent  
 22 of modifying the Court’s prior order to dismissal of Del Webb’s third-party claims without  
 23 prejudice. (Doc. 379.)

24 **IT IS FURTHER ORDERED amending** the Court’s order of February 11, 2013.  
 25 (Doc. 372.) Del Webb’s third-party claims are hereby **dismissed without prejudice**.

26 **IT IS FURTHER ORDERED** directing the Clerk of Court to amend the related  
 27 Judgment located at Doc. 373, to reflect that Del Webb’s third-party claims are **dismissed**  
 28 **without prejudice**.

1 DATED this 8<sup>th</sup> day of May, 2013.

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4 Stephen M. McNamee  
5 Senior United States District Judge  
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